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7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

10 In re

11 GIRARDI KEESE,

12 Debtor.

Case No. 2:20-bk-21022-BR

Chapter 7

**CHAPTER 7 TRUSTEE'S MOTION FOR
ORDER AUTHORIZING COMPROMISE
OF CONTROVERSY RE NICOLE
ROKITA AND NIKITA MANAGEMENT,
INC. PURSUANT TO RULE 9019 OF THE
FEDERAL RULES OF BANKRUPTCY
PROCEDURE AND AUTHORIZING
PAYMENT OF CONTINGENCY FEE TO
SPECIAL AVOIDANCE POWER
LITIGATION COUNSEL;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
ELISSA D. MILLER IN SUPPORT
THEREOF**

DATE:

TIME: [Hearing Only Upon Request]

PLACE:

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1 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR, AND ALL OTHER**
3 **INTERESTED PARTIES:**

4 **MOTION**

5 Through her “Chapter 7 Trustee’s Motion for Order Authorizing
6 Compromise of Controversy Re Nicole Rokita and Nikita Management, Inc. Pursuant to
7 Rule 9019 of the Federal Rules of Bankruptcy Procedure and Authorizing Payment of
8 Contingency Fee to Special Avoidance Power Litigation Counsel; Memorandum of Points
9 and Authorities; Declaration of Elissa D. Miller in Support Thereof” (the “Motion”), plaintiff,
10 Elissa D. Miller (the “Trustee” or “Plaintiff”), the duly appointed, qualified, and acting
11 chapter 7 trustee for the estate of the debtor Girardi Keese (the “Debtor” or “Girardi
12 Keese”) and Successor-in-Interest Trustee of the Girardi Keese Client Trust Accounts,
13 hereby seeks, among other things, an order authorizing and approving, pursuant to Rule
14 9019(a) of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 9013,
15 a settlement agreement by and between the Trustee, on the one hand, and defendants,
16 Nicole Rokita (“Rokita”) and Nikita Management, Inc., a California corporation (“Nikita”
17 and together with Rokita, the “Defendants”), on the other hand.

18 The Motion is based on the following:

19 (a) On December 18, 2020 (the “Petition Date”), petitioning creditors Jill
20 O’Callahan, as successor in interest to James O’Callahan, Robert M. Keese, John
21 Abassian, Erika Saldana, Virginia Antonio, and Kimberly Archie (collectively, the
22 “Petitioning Creditors”) commenced an involuntary petition for relief under chapter 7 of
23 title 11 of the United States Code (the “Bankruptcy Code”) against the Debtor in the
24 United States Bankruptcy Court, Central District of California, Los Angeles Division (the
25 “Court” or “Bankruptcy Court”), styled In re Girardi Keese, bearing Case No. 2:20-bk-
26 21022-BR¹;

27 _____
28 ¹ The Petitioning Creditors also filed an involuntary chapter 7 bankruptcy petition against Thomas V. Girardi (“Thomas”), which is currently pending as Case No. 2:20-bk-21020-BR.

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1 (b) On December 24, 2020, Petitioning Creditors caused to be filed their
2 “Motion for Appointment of Interim Trustee Pursuant to 11 U.S.C. § 303(g); Memorandum
3 of Points and Authorities.” On January 5, 2021, the Court entered its “Order Granting
4 ‘Motion of Petitioning Creditors for Appointment of Interim Trustee Pursuant to 11 U.S.C.
5 303(g).’” On January 6, 2021, the Office of the United States Trustee filed its
6 “(Corrected) Notice of Appointment of Chapter 7 Trustee (11 U.S.C. §§ 303(g) and 701)”
7 pursuant to which, among other things, Elissa D. Miller was appointed interim chapter 7
8 trustee for the Debtor’s estate;

9 (c) On January 13, 2021, the Court entered its “Order Directing: (1) the
10 Clerk of Court to Immediately Enter an Order for Relief Under Chapter 7; (2) the United
11 States Trustee to Immediately Appoint a Chapter 7 Trustee; (3) the Debtor to File All
12 Schedules and Related Documentation for Chapter 7 Case Within Fourteen Days of the
13 Entry of This Order; and (4) Vacating February 16, 2021 Status Conference.” On
14 January 13, 2021, the Clerk of Court entered its “Order for Relief and Order to File
15 Schedules, Statements and List(s).” On January 13, 2021, the Office of the United
16 States Trustee filed its “Notice of Appointment of Trustee and Fixing of Bond; Acceptance
17 of Appointment As Interim Trustee” pursuant to which, among other things, Elissa D.
18 Miller was appointed and accepted her appointment as chapter 7 trustee for the Debtor’s
19 estate, and she continues to act in that capacity as well as the Successor-in-Interest
20 Trustee of the Girardi Keese Client Trust Accounts;

21 (d) On December 29, 2022, the Trustee, as plaintiff, caused to be filed
22 her “Complaint for (1) Avoidance and Recovery of Fraudulent Transfers, (2) Preservation
23 of Fraudulent Transfers, and (3) Disallowance of Claims” (the “Complaint”) against
24 Defendants giving rise to the adversary proceeding entitled Elissa D. Miller v. Nikita
25 Management, Inc., et al., bearing Adv. No. 2:22-ap-01268-BR (the “Action”), pursuant to
26 which the Trustee sought, among other things, to avoid and recover, under both federal
27
28

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1 and state law, certain alleged fraudulent transfers in the total aggregate amount of
2 \$425,000;²

3 (e) Defendants deny that the Trustee is entitled to avoid and recover
4 funds as fraudulent transfers, under either federal or state law, as alleged in the
5 Complaint; and

6 (f) On June 21, 2023, the Trustee and Defendants entered into that
7 certain "Settlement Agreement and Mutual General Release" (the "Rokita Agreement")
8 pursuant to which, in exchange for limited mutual releases, and dismissal of the Action
9 against Defendants, with prejudice, Defendants will pay the estate the total amount of
10 \$30,000. Defendants also agree to waive any claim provided by 11 U.S.C. § 502(h) that
11 may arise in connection with the settlement payment. A true and correct copy of the
12 Rokita Agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

13 The Motion also seeks authority for the Trustee to pay Greenspoon Marder,
14 LLP, special avoidance power litigation counsel for the estate, the sum of \$6,000 from the
15 settlement proceeds, representing the 20% contingency fee authorized by the Court
16 pursuant to its "Order Granting Chapter 7 Trustee's Application for Authority to Employ
17 Greenspoon Marder LLP As Special Avoidance Power Litigation Counsel Effective July 1,
18 2022" (the "Employment Order") [Docket No. 1327] entered on August 26, 2022.³

19 This Motion is made pursuant to Rule 9019 of the Federal Rules of
20 Bankruptcy Procedure, and Local Bankruptcy Rule 9013, on the grounds that the Trustee
21 has determined that the Rokita Agreement is fair, reasonable, and in the best interests of
22 the estate and its creditors, in light of the uncertainties of litigation, the possibility that the
23 Trustee may recover less than the settlement amount on behalf of the estate, and the

24 _____
25 ² The Complaint sought to avoid and recover \$60,000 from Rokita and \$365,000 from Nikita.

26 ³ In addition to a 20% contingency fee of the gross proceeds on any settled avoidance power claim, the
27 Employment Order also authorizes the recovery of hourly fees incurred at 50% of the hourly fees then in
28 effect. At this time, the Trustee only is seeking authority to pay the 20% contingency fee award from the
settlement proceeds. The hourly attorneys' fees incurred will be sought through a separately filed fee
application as required by the Employment Order.

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1 fees and costs associated with prosecuting the adversary proceeding against Defendants
2 since, among other things, (i) the Rokita Agreement will benefit the estate by the infusing
3 it with a total of \$30,000 in settlement proceeds, (ii) Defendants have agreed to waive
4 certain claims against the estate, which will further benefit creditors, and (iii) Defendants
5 will execute a limited mutual release of any claims, attorneys' fees, and the like, relating
6 to the claims made in the adversary proceeding. Moreover, it is within the sound
7 discretion and business judgment of the Trustee to enter into the Rokita Agreement.

8 This Motion is made and based upon the moving papers, the attached
9 memorandum of points and authorities and the supporting declaration of Elissa D. Miller,
10 the pleadings filed in the Debtor's case, all judicially noticeable facts, the arguments and
11 representations of counsel, and any oral or documentary evidence presented at the time
12 of the hearing, if any.

13 **WHEREFORE** the Trustee respectfully requests that the Court enter an
14 order:

- 15 (1) granting this Motion;
- 16 (2) authorizing and approving the Rokita Agreement pursuant to Rule
17 9019(a) of the Federal Rules of Bankruptcy Procedure;
- 18 (3) authorizing payment of the sum of \$6,000 from the settlement
19 proceeds to Greenspoon Marder, LLP, special avoidance power litigation counsel for the
20 Trustee, representing the 20% contingency fee previously approved by the Court
21 pursuant to the Employment Order; and
- 22 (4) granting such other and further relief as this Court deems just and
23 proper under the circumstances.

24 DATED: July 6, 2023

Greenspoon Marder LLP

26 By: /s/ Daniel A. Lev

27 Daniel A. Lev
28 Attorneys for Elissa D. Miller, Chapter 7
Trustee

MEMORANDUM OF POINTS AND AUTHORITIES

I.

PREFATORY STATEMENT

During the course of her administration of the Debtor's estate, the Trustee determined that numerous parties received preferential and fraudulent transfers within the statutory time periods set forth by applicable law. As a result, the Trustee filed over 100 complaints seeking the avoidance and recovery of the alleged preferential and fraudulent transfers. The Trustee now has entered into a settlement with two of the defendants, and seeks Court approval of the compromise. The Trustee believes that the settlement satisfies the prerequisites adopted by the Ninth Circuit and, therefore, the Court should defer to the Trustee's business judgment and grant the Motion.

II.

RELEVANT BACKGROUND

A. Commencement of Involuntary Petition, Entry of Order for Relief, and Appointment of Chapter 7 Trustee

On December 18, 2020 (the "Petition Date"), petitioning creditors Jill O'Callahan, as successor in interest to James O'Callahan, Robert M. Keese, John Abassian, Erika Saldana, Virginia Antonio, and Kimberly Archie (collectively, the "Petitioning Creditors") commenced an involuntary petition for relief under chapter 7 of title 11 of the United States Code (the "Bankruptcy Code") against Girardi Keese.⁴

On December 24, 2020, Petitioning Creditors caused to be filed their "Motion for Appointment of Interim Trustee Pursuant to 11 U.S.C. § 303(g); Memorandum of Points and Authorities." On January 5, 2021, the Court entered its "Order Granting 'Motion of Petitioning Creditors for Appointment of Interim Trustee Pursuant to 11 U.S.C. 303(g).'" On January 6, 2021, the Office of the United States Trustee filed its "(Corrected) Notice of Appointment of Chapter 7 Trustee (11 U.S.C. §§ 303(g) and 701)"

⁴ The Petitioning Creditors also filed an involuntary chapter 7 bankruptcy petition against Thomas V. Girardi ("Thomas"), which is currently pending as Case No. 2:20-bk-21020-BR.

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1 pursuant to which, among other things, Elissa D. Miller was appointed interim chapter 7
2 trustee for Girardi Keese's estate.

3 On January 13, 2021, the Court entered its "Order Directing: (1) the Clerk of
4 Court to Immediately Enter an Order for Relief Under Chapter 7; (2) the United States
5 Trustee to Immediately Appoint a Chapter 7 Trustee; (3) the Debtor to File All Schedules
6 and Related Documentation for Chapter 7 Case Within Fourteen Days of the Entry of
7 This Order; and (4) Vacating February 16, 2021 Status Conference." On January 13,
8 2021, the Clerk of Court entered its "Order for Relief and Order to File Schedules,
9 Statements and List(s)." On January 13, 2021, the Office of the United States Trustee
10 filed its "Notice of Appointment of Trustee and Fixing of Bond; Acceptance of
11 Appointment As Interim Trustee" pursuant to which, among other things, Elissa D. Miller
12 was appointed and accepted her appointment as chapter 7 trustee for the Debtor's
13 estate, and she continues to act in that capacity as well as the Successor-in-Interest
14 Trustee of the Girardi Keese Client Trust Account.

15 **B. Uncovering the Debtor's Fraudulent Enterprise**

16 As the Trustee quickly learned after her appointment, despite all
17 appearances, Girardi Keese was nothing more than an illicit and felonious business
18 operated to line the pockets of Thomas, his wife, and several collaborators. While the
19 Trustee continues to investigate the magnitude of the fraud that spanned decades, it is
20 obvious that tens of millions of dollars of client and partnership funds were stolen and
21 diverted to Thomas and others.

22 Emblematic of the rampant fraud and pervasive misappropriation of client
23 and creditor funds, during a time when Girardi Keese was in a precarious financial state,
24 and was not paying its creditors, Thomas and his co-conspirators began a systematic
25 process of draining the available cash, often times consisting of stolen client trust funds,
26 by, among other things, making distributions to certain preferred creditors or third parties
27 from funds of Girardi Keese's estate and using the funds to invest in speculative business
28 ventures not in the firm's name. Thomas and his co-conspirators conspired by purpose

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1 and design to abscond and secrete the assets of Girardi Keese, as well as funds held in
2 trust for clients, for the purpose of enriching themselves and others while at the same
3 time defrauding Girardi Keese's clients and creditors.

4 In virtually each instance, these transfers were made for less than
5 reasonably equivalent value in return and during a time in which Girardi Keese was
6 insolvent or was rendered insolvent as a result of the transfers, or when Girardi Keese
7 was engaged or was about to engage in a business or a transaction for which the
8 remaining assets of Girardi Keese were unreasonably small in relation to the business or
9 transaction. Often times, for example, Thomas and others used funds from "interest on
10 lawyers' trust accounts" (or "IOLTAs"), which accounts were intended to safeguard client
11 funds, for illegitimate purposes. Despite the strict prohibitions on the use of funds in an
12 IOLTA, Thomas and others used Girardi Keese's general operating accounts and IOLTAs
13 as if they were common depositories of not only Girardi Keese client funds, but also their
14 personal funds.

15 Hidden from the public, however, was the fact that, over the course of his
16 four-decade career, the State Bar of California received no less than 205 complaints
17 against Thomas alleging he misappropriated settlement money, abandoned clients, and
18 committed other serious ethical violations. Eventually, Thomas was suspended from the
19 practice of law in March 2021 and was finally disbarred by the California Supreme Court
20 in July 2021.

21 **C. Retention of Special Litigation Counsel, Investigation of Potential**
22 **Avoidance Power Claims, and Settlement With Defendants**

23 In order to recover the misappropriated funds wrongfully diverted by the
24 Debtor, the Trustee employed Greenspoon Marder, LLP ("Greenspoon") as her special
25 avoidance power litigation counsel. According to the "Chapter 7 Trustee's Application for
26 Authority to Employ Greenspoon Marder LLP As Special Avoidance Power Litigation
27 Counsel Effective July 1, 2022; Declaration of Daniel A. Lev in Support Thereof" (the
28

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1 “Greenspoon Application”) [Docket No. 1297] filed on July 28, 2022, the Trustee sought
2 to employ Greenspoon on a hybrid fee basis.⁵

3 In sum, if the Trustee elected to commence an avoidance power claim
4 through the preparation, filing, and prosecution of a formal complaint in this Court,
5 Greenspoon agreed to bill its time on an hourly basis at 50% of its standard fees unless
6 and until Greenspoon recovered under one or more of the avoidance power claims. For
7 recoveries under any avoidance power claim which was the subject of an adversary
8 proceeding, Greenspoon would be entitled to a success fee equal to 20% of the amount
9 recovered under each avoidance power claim.

10 By way of example only, if the Trustee compromised an avoidance power
11 claim in the amount of \$1,000,000 for \$100,000, Greenspoon would be entitled to 50% of
12 its hourly rate for services rendered in preparing and prosecuting the claim (subject to
13 approval of the Court), plus an additional \$20,000 success fee (20% of \$100,000).
14 Greenspoon would be entitled to petition the Court for allowance of the 20% success fee
15 separate and apart from the fees rendered on an hourly basis which could only be sought
16 through a fee application. The Greenspoon Application was granted pursuant to the
17 “Order Granting Chapter 7 Trustee’s Application for Authority to Employ Greenspoon
18 Marder LLP As Special Avoidance Power Litigation Counsel Effective July 1, 2022” (the
19 “Employment Order”) [Docket No. 1327] entered on August 26, 2022.

20 Based on a comprehensive review of the Debtor’s books and records to
21 determine the scope of the estate’s avoidance power claims, the Trustee authorized the
22 filing of the Complaint against Defendants. After the Complaint was filed, Defendants
23 challenged numerous elements of the Trustee’s claims and raised numerous affirmative

24 _____
25 ⁵ As explained in the Greenspoon Application, the Trustee first employed **SulmeyerKupetz**, A Professional
26 Corporation (“Sulmeyer”), as the estate’s special avoidance power litigation counsel pursuant to the “Order
27 Granting Chapter 7 Trustee’s Application for Authority to Employ SulmeyerKupetz, A Professional
28 Corporation, as Special Avoidance Power Litigation Counsel” [Docket No. 893] entered by the Court on
November 30, 2021. However, on July 1, 2022, the majority of the lawyers from Sulmeyer joined
Greenspoon. As a result, the Trustee requested that Greenspoon be employed as the estate’s special
litigation counsel effective July 1, 2022, as Greenspoon was familiar with the legal issues facing the
Trustee and the estate with respect to the Debtor’s chapter 7 case.

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1 defenses to the Action, including defenses under 11 U.S.C. § 550(b) (good faith
2 transferee for value and immediate or mediate good faith transferee of such transferee).

3 In addition, Defendants provided documentation to the Trustee
4 demonstrating that, even if the Trustee was successful in avoiding the transfers, there
5 were serious questions regarding the recovery of any judgment from Defendants. Nikita
6 was formed by Rokita in 2017 for the purpose of opening an all-keto restaurant that
7 specialized in low-carb, gluten-free ketogenic food. However, the restaurant failed and
8 was formally dissolved in February 2011, shortly after the Petition Date. As a result,
9 there were no assets from which the Trustee could recover, presuming a judgment was
10 even entered against Nikita.

11 Moreover, there was uncertainty whether Rokita possessed the financial
12 resources to satisfy any judgment entered against her. So while the Trustee was
13 prepared to contest the individual defenses, the Trustee determined that it was not
14 economically beneficial to continue to prosecute the Action in light of both Nikita and
15 Rokita's financial positions, defenses, and the settlement.

16 As a result, on June 21, 2023, the Trustee and Defendants entered into that
17 certain "Settlement Agreement and Mutual General Release" (the "Rokita Agreement").
18 A true and correct copy of the Rokita Agreement is attached hereto as Exhibit "A" and
19 incorporated herein by reference. The Trustee believes the settlement (which is
20 summarized below) is in the best interests of creditors of the estate and should be
21 approved by the Court. See Declaration of Elissa D. Miller affixed hereto.

22 **III.**

23 **SUMMARY OF SETTLEMENT**

24 The Rokita Agreement can be summarized as follows:

- 25 • In exchange for a dismissal of the Action against Defendants, with
26 prejudice, Defendants shall pay the estate the total amount of Thirty Thousand Dollars
27 and Zero Cents (\$30,000) (the "Settlement Payment").
28

- The Settlement Payment shall be due on or before the fifteenth (15th) calendar day following the date the order of the Court, or other court of competent jurisdiction, approving the settlement becomes a final, unstayed order.

benefit is that the Trustee is hopeful she will recover sufficient assets to pay off the secured claims and to be able to make a distribution to unsecured creditors.

V.

ARGUMENT

A. The Legal Standard for Approving a Compromise of Controversy

Rule 9019(a) of the Federal Rules of Bankruptcy Procedure states as follows with respect to motions brought by trustees to approve settlements:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

As this Court is aware, compromise is favored over continued litigation. See In re A&C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986), cert. denied, 479 U.S. 854, 107 S. Ct. 189, 93 L. Ed. 2d 122 (1986); Port O'Call Investment Co. v. Blair (In re Blair), 538 F.2d 849, 851 (9th Cir. 1976). Generally, a compromise should be approved if it is "fair and equitable" and in "the best interests of the estate." In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988); In re Schmidtt, 215 B.R. 417, 424 (B.A.P. 9th Cir. 1997); St. Paul Fire & Marine Insurance Co. v. Vaughn, 779 F.2d 1003, 1010 (4th Cir. 1985); In re Continental Investment Corp., 637 F.2d 8, 11 (1st Cir. 1980). Whether a compromise will benefit or harm the debtor is immaterial.

Specifically, in evaluating whether to approve a compromise, courts in the Ninth Circuit must consider the following:

- (a) The probability of success in litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved and the expense; inconvenience and delay necessarily attending it; and

1 (d) the paramount interest of the creditors and a proper deference to
2 their reasonable views.

3 A&C Properties, 784 F.2d at 1381.

4 In considering these factors, courts are guided by two principles. First, as
5 noted earlier, “the law favors compromise.” Blair, 538 F.2d at 851. Compromises are
6 favored in bankruptcy, and have become “a normal part of the process of reorganization”.
7 Protective Committee for Independent Stockholders of TMT Trailer Ferry Inc. v.
8 Anderson, 390 U.S. 414, 424, 88 S. Ct. 1157, 20 L. Ed. 2d 1 (1968) (quoting Case v. Los
9 Angeles Lumber Prods. Co., 308 U.S. 106, 130, 60 S. Ct. 1, 84 L. Ed. 110 (1939)).

10 Second, a compromise should be approved unless it “fall[s] below the lowest point in the
11 range of reasonableness”. In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983), cert.
12 denied, 464 U.S. 822, 104 S. Ct. 88, 78 L. Ed. 2d 97 (1985). As the court in W.T. Grant
13 aptly commented:

14 [The] responsibility of the bankruptcy judge, and ours upon
15 review, is not to decide the numerous questions of law and
16 fact raised by the appellants but rather to canvass the issues
17 and see whether the settlement ‘fall[s]’ below the lowest
18 point in the range of reasonableness . . .

19 Id., at 608.

20 In fact,
21 [I]t is inappropriate for the court to substitute its own
22 judgment as to the wisdom of a proposed settlement for that
23 of the trustee. The court need not engage in an exhaustive
24 analysis of the law and merits of each claim, or the likelihood
25 of the outcome, as doing so would in large part defeat the
26 purpose of settlement. Rather, the court’s role is to ensure
27 that the trustee has exercised proper business judgment in
28 making the decision to agree to the proposed settlement,

1 and that the settlement “falls above the lowest possible point
2 in the range of reasonableness.”

3 In re 110 Beaver Street P’ship, 244 B.R. 185, 187 (Bankr. D. Mass. 2000). See also In re
4 Pacific Gas & Elec. Co., 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004).

5 Here, under express provisions of the Bankruptcy Code, a trustee is vested
6 with the standing and authority to seek compromises of legal and factual disputes. As
7 such, settlements which have been negotiated by a trustee are entitled to deference.
8 See In re Morrison, 69 B.R. 586, 592 (Bankr. E.D. Pa. 1987) (objecting creditors may not
9 substitute their judgment for that of the trustee). Moreover, when considering these
10 factors, the court need only canvass the issues, “a mini trial on the merits is not required.”
11 Schmidt, 215 B.R. at 423.

12 In this instance, there are a variety of reasons why the Court should
13 approve the settlement. As demonstrated, the application of the A&C Properties test to
14 the settlement requires a finding that the compromise be approved, even over the
15 objections of disappointed creditors.

16 **B. The Settlement Should Be Approved Pursuant to Rule 9019(a) of the**
17 **Federal Rules of Bankruptcy Procedure**

18 For the following reasons, the Trustee submits that the settlement is in the
19 best interests of the Debtor’s estate, and satisfies the criteria established by the Ninth
20 Circuit in A&C Properties.

21 **1. The Probability of Success in Litigation**

22 The first factor to evaluate whether a settlement is fair and equitable is the
23 probability of success in the litigation. A&C Properties, 784 F.2d at 1381. A precise or
24 exact judicial determination of the likely outcome is not required because that would
25 defeat the purpose of compromising the litigation. In re Telesphere Communications,
26 Inc., 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994); In re Energy Coop., Inc., 886 F.2d 921,
27 929 (7th Cir. 1989) (quoting In re Penn Central Transp. Co., 596 F.2d 1102, 1114 (3d Cir.
28 1979)). As mentioned earlier, in the Ninth Circuit a bankruptcy court need not conduct an

1 exhaustive investigation into the validity of the asserted claim, but rather “[i]t is sufficient
2 that, after apprising itself of all facts necessary for an intelligent and objective opinion
3 concerning the claim’s validity, the court determines that either (1) the claim has a
4 ‘substantial foundation’ and is not ‘clearly invalid as a matter of law,’ or (2) the outcome of
5 the claim’s litigation is doubtful.” United States of America v. Alaska National Bank
6 (Matter of Walsh Constr., Inc.), 669 F.2d 1325, 1328 (9th Cir. 1982).

7 The Ninth Circuit cited Walsh approvingly in A&C Properties, noting that the
8 purpose of a compromise agreement is to allow the trustee and creditors “to avoid the
9 expenses and burdens associated with litigating sharply contested and dubious claims,”
10 and that the “law favors compromise and not litigation for its own sake.” Blair, 538 F.2d
11 at 851. Here, the Trustee contends, without limitation, that the settlement is fair and
12 reasonable, in the best interests of the estate, and made according to the Trustee’s
13 sound business judgment. While the Trustee is confident that she would prevail in the
14 Action, to some degree, given the defenses and the legal and factual challenges being
15 asserted by Defendants, the costs of prosecuting the Action through trial would be cost-
16 prohibitive.

17 Understanding that settlement generally is the preferred path forward, the
18 Trustee and her professionals had numerous written and verbal communications with
19 Defendants since the date the Complaint was filed. These communications and
20 meetings involved in-depth settlement negotiations concerning the merits of the Action
21 and any mitigating factors or defenses, including the fact that the collection of any
22 judgment remained in doubt based on the documentation provided to the Trustee. After
23 these discussions, the Trustee and her professionals analyzed the merits of Defendants’
24 asserted defenses and challenges to certain elements of the Trustee’s claims, and took
25 into account the risks of collection.

26 Although there were open questions regarding the applicability of the range
27 of challenges and defenses raised, it became clear that if Defendants were to prevail on
28 any of their potential defenses, then the net recovery to the estate could be significantly

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1 reduced, if not eliminated. Furthermore, the estate would incur a significant amount of
2 additional attorneys' fees in litigating the Action. In fact, the Trustee estimates that
3 litigating this matter through judgment could cost the estate tens of thousands of dollars,
4 which would have included time-consuming discovery. In this regard, there would likely
5 be numerous discovery papers served, together with depositions of parties and non-
6 parties, including potential experts. Substantial document review would also ensue. The
7 settlement avoids these unnecessary pre-trial and trial preparation costs, and obviates
8 the need to seek the later speculative enforcement of any judgment against Defendants.

9 As a reminder, in satisfying this first element of the four-part A&C Properties
10 test, the burden is not on a trustee to conclusively establish that a defendant would be
11 successful at a trial on the issues raised in an action, as that would defeat the purpose of
12 settlement and would eliminate any cost savings from the settlement. Rather, all that a
13 trustee is required to demonstrate is that, to the reasonable satisfaction of the court, all
14 things being considered, it is prudent to eliminate the risks of litigation to achieve specific
15 certainty, though it might be considerably less, or more, than if the case was fought to the
16 bitter end. See In re Aloha Racing Foundation, Inc., 257 B.R. 83 (Bankr. N.D. Ala. 2000).

17 In fact, at least one court has found that a settlement reached by a trustee
18 could be approved even after the court had decided to rule for the trustee on a contested
19 matter. See In re Dalen, 259 B.R. 586 (Bankr. W.D. Mich. 2001). In Dalen, the trustee
20 sought approval of a settlement after the court had already decided to rule for the trustee,
21 such that the estate would have profited if the settlement were rejected. The ultimate
22 issue for the court, however, was whether the trustee exercised reasonable judgment in
23 entering into the settlement based upon information then in her possession. As long as a
24 court is able to make this determination, and finds that the trustee has fulfilled her
25 fiduciary duty to the estate, the fact that creditors are objecting to the settlement is
26 irrelevant to the court's determination under Rule 9019(a).

27 Here, there is no question that the Trustee has fulfilled her fiduciary duties
28 to the estate by not only aggressively pursuing the recovery of the alleged fraudulent

1 transfers, but by entering into the Rokita Agreement. In light of the indisputable fact that
2 the estate will receive significant funds through the settlement, it cannot be said that the
3 Trustee has not acted in the best interests of creditors. This settlement will benefit the
4 estate and its creditors and will end a contested matter without incurring substantial
5 attorneys' fees and costs.

6 **2. The Difficulties, if any, to be Encountered in the Matter of**
7 **Collection**

8 Of obvious concern to the Trustee was the possibility that any judgment
9 awarded by the Court would not be collectable. As a practical matter, there was no
10 assurance that the Trustee would prevail in avoiding and recovering the alleged
11 fraudulent transfers if the matter proceeded to trial. However, even if the Trustee was
12 successful, serious questions remained regarding the recovery of any judgment from
13 Defendants. As noted, Defendants produced documentation placing the collection of any
14 judgment in doubt.

15 Thus, given the amount of the claim, collection costs, even if successful,
16 would have further reduced any net benefit to the estate, even assuming collection of the
17 full amount of the judgment was possible. Hence, even if the Trustee prevailed in
18 avoiding and recovering each of the avoidable transfers at issue, there remained a
19 legitimate concern of recovery.

20 As a result, the Trustee was required to factor into her decision the
21 likelihood of recovering on a judgment, as well as the time that would lapse if any
22 judgment was appealed or was subject to collection proceedings. When weighed against
23 the continuing administrative costs that would need to be incurred to obtain a final
24 judgment, this element of the A&C Properties test militated in favor of settlement.

25 **3. The Complexity of the Litigation and the Expense,**
26 **Inconvenience and Delay Necessarily Attending It**

27 The rationale behind public policy favoring pre-trial settlements is that
28 litigation, depending upon its complexity, can occupy a court's docket for years on end,

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1 depleting the resources of the parties and the taxpayers while rendering meaningful relief
2 increasingly elusive. In a bankruptcy context, such litigation costs can be particularly
3 burdensome on the bankruptcy estate given the financial instability of the estate. See In
4 re Grau, 267 B.R. 896 (Bankr. S.D. Fla. 2001). Here, the complexity of ensuring
5 collection of a judgment dictated that the Trustee seek a path towards settlement. The
6 legal and factual issues raised in the Action spanned years, are factually complex, are
7 contested, and would be extremely time consuming and costly for the estate to prosecute
8 and defend through possible appeals, particularly if the Trustee was forced to seek
9 collection efforts against Defendants.

10 Moreover, the Debtor's chapter 7 case has been pending on the Court's
11 docket for more than two years. If the Trustee was forced to prosecute the Action to
12 finality, it is possible that at least one year would pass before any judgment was
13 rendered. It is also likely that any judgment obtained by the Trustee could be the subject
14 of appeals and further appellate litigation for years to come. During this time,
15 administrative fees and costs would continue to escalate, reducing any net recovery for
16 the estate. As a result, the Trustee's decision to put an end to the Action will benefit the
17 estate and creditors alike.

18 **4. The Paramount Interest of Creditors**

19 The paramount interest of creditors which a bankruptcy court must consider
20 in deciding whether to approve a proposed compromise, generally reflects not only the
21 desire of creditors to obtain the maximum possible recovery, but also their competing
22 desire that the recovery should occur in the least amount of time possible. See In re
23 Marples, 266 B.R. 202, 206 (Bankr. D. Idaho 2001); In re Lake City RV, Inc., 226 B.R.
24 241, 243-44 (Bankr. D. Idaho 1998). Here, the estate is not in the position to fund
25 lengthy, difficult, and potentially uncertain litigation. The settlement resolves the
26 competing and existing claims between the parties in a manner meant to avoid further
27 administrative expenses and also will facilitate the distribution of assets in an orderly
28 fashion which will allow the chapter 7 case to be timely administered.

1 As noted earlier, generally, a court should approve a proposed settlement
2 so long as it is above “the lowest point in the range of reasonableness,” giving deference
3 to a trustee’s reasonable business judgment. See In re Receivership Estate of Indian
4 Motorcycle Mfg., Inc., 299 B.R. 8, 21 (D. Mass. 2003) (“The court may give substantial
5 deference to the business judgment of a bankruptcy trustee when deciding whether to
6 approve a settlement”). Since the Rokita Agreement adds significant value to the estate,
7 while greatly reducing the administrative fees and expenses that would be incurred in
8 prosecuting the claims, the settlement far exceeds that threshold standard and should be
9 approved.

10 **C. The Court Should Authorize Payment of the 20% Success Fee to**
11 **Greenspoon as Previously Approved By the Court**

12 Typically, where special counsel has been employed and is to be
13 compensated on a contingency fee basis, a trustee’s motion seeking to obtain approval
14 of the settlement almost invariably includes a request for payment of special counsel’s
15 fees and costs. Such is the case here, where the Employment Order specifically
16 authorized the payment of a 20% success fee to Greenspoon upon the successful
17 settlement of an avoidance power claim. By detailing how much compensation is being
18 sought on a contingency basis, the Motion enables the Court and interested parties to
19 determine that the calculations are consistent with the Greenspoon Application and
20 Employment Order.

21 Although the Trustee could, conceivably, request that Greenspoon file a
22 separate application for the success fee, this would be highly inefficient and would be a
23 waste of judicial resources. Since this is one of more than 100 actions filed, the Court
24 could soon find itself burdened with a multitude of separate fee applications each time an
25 avoidance power action is compromised. Because the Trustee hopes to save the time
26 and expense of separate applications and additional notices to creditors, the Trustee
27 believes this “combined” compromise/compensation motion is appropriate under 11
28 U.S.C. §§ 105(a), 328(a), and 330(a). See In re Olson, 2006 WL 2433448 (Bankr. D.

Idaho July 24, 2006) (court recognizes propriety of motions to approve compromises that also include requests for payment of court-approved contingency fees); In re H.K. Porter Co., Inc., 183 B.R. 96 (Bankr. W.D. Pa. 1995) (in determining dispute over ownership of settlement proceeds, court referenced previously approved motion for authority to settle litigation and for authority to pay attorney a 50% contingency fee out of settlement proceeds).

VI.

CONCLUSION

Based on the foregoing, the Trustee respectfully requests that the Court grant the Motion in its entirety, and for such other and further relief as the Court deems appropriate under the circumstances.

DATED: July 6, 2023

Greenspoon Marder LLP

By: /s/ Daniel A. Lev

Daniel A. Lev

Attorneys for Elissa D. Miller, Chapter 7
Trustee

Greenspoon Marder LLP

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DECLARATION OF ELISSA D. MILLER

I, Elissa D. Miller, state as follows:

1. I am an attorney at law, duly qualified and licensed to practice before this Court, and am the duly appointed, qualified, and acting chapter 7 trustee for the estate of the debtor Girardi Keese (the “Debtor” or “Girardi Keese”). I have personal knowledge of the facts stated in this Declaration, and if called to testify, could and would, without waiver of any applicable privilege, testify that the facts stated in this Declaration are true and correct to the best of my knowledge and information.

2. I make this declaration in support of my “Chapter 7 Trustee’s Motion for Order Authorizing Compromise of Controversy Re Nicole Rokita and Nikita Management, Inc. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and Authorizing Payment of Contingency Fee to Special Avoidance Power Litigation Counsel; Memorandum of Points and Authorities; Declaration of Elissa D. Miller in Support Thereof” (the “Motion”), through which I seek, among other things, an order authorizing and approving, pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 9013, a settlement agreement by and between me, in my capacity as trustee, on the one hand, and defendants, Nicole Rokita (“Rokita”) and Nikita Management, Inc., a California corporation (“Nikita” and together with Rokita, the “Defendants”), on the other hand. In sum, in exchange for limited mutual releases, and dismissal of the action against Defendants, with prejudice, Defendants will pay the estate the total amount of \$30,000. Defendants also agree to waive any claim provided by 11 U.S.C. § 502(h) that may arise in connection with the settlement payment. A true and correct copy of the Rokita Agreement is attached hereto as Exhibit “A” and incorporated herein by reference. As part of the Motion, I also seek authority to pay Greenspoon Marder, LLP (“Greenspoon”), special avoidance power litigation counsel for the estate, the sum of \$6,000 from the settlement proceeds, representing the 20% contingency fee authorized by the Court pursuant to its “Order Granting Chapter 7 Trustee’s Application for Authority to Employ Greenspoon Marder LLP As Special

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1 Avoidance Power Litigation Counsel Effective July 1, 2022” (the “Employment Order”)
2 [Docket No. 1327] entered on August 26, 2022.

3 3. As I ultimately learned after my appointment as trustee, despite all
4 appearances, Girardi Keese was an illicit and felonious business enterprise that engaged
5 in a decades-long fraud resulting in the wrongful diversion and misappropriation of tens of
6 millions of dollars of client and partnership funds. Emblematic of the rampant fraud and
7 pervasive misappropriation of client and creditor funds, during a time when Girardi Keese
8 was in a precarious financial state, and was not paying its creditors, Thomas and his co-
9 conspirators began a systematic process of draining the available cash, often times
10 consisting of stolen client trust funds, by, among other things, making distributions to
11 certain preferred creditors or third parties from funds of Girardi Keese’s estate and using
12 the funds to invest in speculative business ventures not in the firm’s name. Thomas and
13 his co-conspirators conspired by purpose and design to abscond and secrete the assets
14 of Girardi Keese, as well as funds held in trust for clients, for the purpose of enriching
15 themselves and others while at the same time defrauding Girardi Keese’s clients and
16 creditors.

17 4. In virtually each instance, these transfers were made for less than
18 reasonably equivalent value in return and during a time in which Girardi Keese was
19 insolvent or was rendered insolvent as a result of the transfers, or when Girardi Keese
20 was engaged or was about to engage in a business or a transaction for which the
21 remaining assets of Girardi Keese were unreasonably small in relation to the business or
22 transaction. Often times, for example, Thomas and others used funds from “interest on
23 lawyers’ trust accounts” (or “IOLTAs”), which accounts were intended to safeguard client
24 funds, for illegitimate purposes. Despite the strict prohibitions on the use of funds in an
25 IOLTA, Thomas and others used Girardi Keese’s general operating accounts and IOLTAs
26 as if they were common depositories of not only Girardi Keese client funds, but also their
27 personal funds.

28

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1 5. Based on a comprehensive review of the Debtor's books and records
2 meant to determine the scope of the estate's avoidance power claims, I authorized the
3 filing of an adversary proceeding against Defendants seeking the avoidance and
4 recovery of fraudulent transfers in the total aggregate amount of \$425,000. After the
5 operative complaint was filed, I learned that Defendants were challenging numerous
6 elements of the estate's claims and were raising numerous affirmative defenses to the
7 action, including defenses under 11 U.S.C. § 550(b). In addition, Defendants provided
8 documentation that, even if I was successful in avoiding the transfers, there were serious
9 questions regarding the recovery of any judgment from Defendants. Nikita was formed
10 by Rokita in 2017 for the purpose of opening an all-keto restaurant that specialized in
11 low-carb, gluten-free ketogenic food. However, the restaurant failed and was formally
12 dissolved in February 2011, shortly after the Petition Date. As a result, there were no
13 assets from which I could recover presuming a judgment was even entered against
14 Nikita. Moreover, there was uncertainty whether Rokita possessed the financial
15 resources to satisfy any judgment entered against her. So while So while I was prepared
16 to contest the individual defenses, I determined that it was not economically beneficial to
17 continue to prosecute the Action in light of Nikita and Rokita's financial positions,
18 defenses, and the settlement.

19 6. In my opinion, the settlement is fair and reasonable, in the best
20 interests of the estate, and was made according to my sound business judgment. While I
21 believe that I likely would prevail if the action to trial, to some degree, given the defenses
22 and the legal and factual challenges being asserted by Defendants, the costs of
23 prosecuting the action through and after trial would be cost-prohibitive. Understanding
24 that settlement is always the preferred path forward, my professionals and I carefully
25 reviewed Defendants' potential defenses when considering the settlement offers being
26 discussed, including the fact that the collection of any judgment against Defendants was
27 in doubt. Although there were open questions regarding the applicability of the range of
28 challenges and defenses raised, it became clear that if Defendants were to prevail on any

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1 of their potential defenses, then the net recovery to the estate could be significantly
2 reduced, if not eliminated. Furthermore, the estate would incur a significant amount of
3 additional attorneys' fees in litigating the action through final judgment, including post-
4 judgment remedies. Therefore, I believe the settlement is in the best interests of the
5 estate as it eliminates the risks of litigation to achieve specific certainty.

6 7. Of obvious concern to me was the possibility that any judgment
7 awarded by the Court would not be collectable. As a practical matter, there was no
8 assurance that I would prevail in avoiding and recovering the alleged fraudulent transfers
9 if the matter proceeded to trial. However, even I was successful, serious questions
10 remained regarding the recovery of any judgment from Defendants. As noted, Nikita
11 operated a short-lived restaurant that failed and the entity was dissolved in early 2021,
12 leaving no assets for collection. There also was a demonstrated uncertainty regarding
13 Rokita's financial resources to satisfy any judgment, rendering the collection of any
14 judgment against her speculative as well. Thus, given the amount of the claim, collection
15 costs further would have reduced any net benefit to the estate, even assuming collection
16 of the full amount of the judgment was possible. Therefore, even if I prevailed in avoiding
17 and recovering each of the avoidable transfers at issue, there remained legitimate
18 concerns of recovery. Hence, when weighed against the continuing administrative costs
19 that would need to be incurred to obtain and collecting a final judgment, this element of
20 the A&C Properties test militated in favor of settlement.

21 8. Here, the complexity of ensuring collection of a judgment dictated
22 that I seek a consensual resolution. The legal and factual issues raised in the action are
23 factually complex, are contested, and would be extremely time consuming and costly for
24 the estate to prosecute and defend through possible appeal. Moreover, the Debtor's
25 chapter 7 case has been pending on the Court's docket for more than two years. If I was
26 forced to prosecute the action to finality, and then seek to enforce post-judgment
27 remedies, it is possible that at least one year would pass before any judgment was
28 rendered. It is also likely that any judgments obtained would be the subject of appeals

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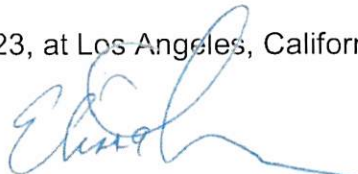
1 and further appellate litigation for years to come. During this time, administrative fees
2 and costs would continue to escalate, reducing any net recovery for the estate. As a
3 result, my decision to put an end to the action will benefit the estate and creditors alike.

4 9. In addition, the estate is not in the position to fund lengthy, difficult,
5 and potentially uncertain litigation. The settlement resolves the competing and existing
6 claims between the parties in a manner meant to avoid further administrative expenses
7 and also will facilitate the distribution of assets in an orderly fashion which will allow the
8 chapter 7 case to be timely administered. Since the Rokita Agreement adds significant
9 value to the estate, while greatly reducing the administrative fees and expenses that
10 would be incurred in prosecuting the avoidance power claims, the settlement does not fall
11 below the lowest point in the range of reasonableness and it should be approved.

12 10. Finally, the Court should also authorize payment of the 20% success
13 fee to Greenspoon as previously approved by the Court. Although I could, conceivably,
14 request that Greenspoon file a separate application for the success fee, this would be
15 highly inefficient and would be a waste of judicial resources. Since this is one of more
16 than 100 actions filed, the Court could soon find itself burdened with a multitude of
17 separate fee applications each time an avoidance power action was compromised.
18 Because I hope to save the time and expense of having Greenspoon file separate
19 applications involving additional notices to creditors, I believe the contingency fee can
20 and should be approved as part of this Motion.

21 I declare under penalty of perjury under the laws of the United States of
22 America that the foregoing is true and correct.

23 Executed this 6th day of July, 2023, at Los Angeles, California.



24
25
26 Elissa D. Miller, Chapter 7 Trustee
27
28

EXHIBIT A

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This “Settlement Agreement and Mutual General Release” (the “**AGREEMENT**”) is entered into as of June 21, 2023, by and between Elissa D. Miller (the “**TRUSTEE**”), in her sole and exclusive capacity as the duly appointed, qualified, and acting chapter 7 trustee for the bankruptcy estate (the “**ESTATE**”) of the debtor Girardi Keese (the “**DEBTOR**”) and as the Successor-in-Interest Trustee of the Girardi Keese Client Trust Accounts, and the successors and assigns of the **TRUSTEE** in any capacity, on the one hand, and Nikita Management, Inc., a California corporation (“**NIKITA**”), and Nicole Rokita, an individual (“**ROKITA**” and, together with **NIKITA**, the “**DEFENDANTS**”), on the other hand, as follows:

RECITALS

A. On December 18, 2020 (the “**PETITION DATE**”), petitioning creditors Jill O’Callahan, as successor in interest to James O’Callahan, Robert M. Keese, John Abassian, Erika Saldana, Virginia Antonio, and Kimberly Archie (collectively, the “**PETITIONING CREDITORS**”) commenced an involuntary petition for relief under chapter 7 of title 11 of the United States Code (the “**BANKRUPTCY CODE**”) against the **DEBTOR** in the United States Bankruptcy Court, Central District of California, Los Angeles Division (the “**COURT**” or “**BANKRUPTCY COURT**”), styled In re Girardi Keese, bearing Case No. 2:20-bk-21022-BR.

B. On December 24, 2020, **PETITIONING CREDITORS** caused to be filed their “Motion for Appointment of Interim Trustee Pursuant to 11 U.S.C. § 303(g); Memorandum of Points and Authorities”. On January 5, 2021, the **COURT** entered its “Order Granting ‘Motion of Petitioning Creditors for Appointment of Interim Trustee Pursuant to 11 U.S.C. 303(g)’”. On January 6, 2021, the Office of the United States Trustee filed its “(Corrected) Notice of Appointment of Chapter 7 Trustee (11 U.S.C. §§ 303(g) and 701)” pursuant to which, among other things, Elissa D. Miller was appointed interim chapter 7 trustee for the **DEBTOR’S ESTATE**.

C. On January 13, 2021, the **COURT** entered its “Order Directing: (1) the Clerk of Court to Immediately Enter an Order for Relief Under Chapter 7; (2) the United States Trustee to Immediately Appoint a Chapter 7 Trustee; (3) the Debtor to File All Schedules and Related Documentation for Chapter 7 Case Within Fourteen Days of the Entry of This Order; and (4) Vacating February 16, 2021 Status Conference”. On January 13, 2021, the Clerk of Court entered its “Order for Relief and Order to File Schedules, Statements and List(s)”. On January 13, 2021, the Office of the United States Trustee filed its “Notice of Appointment of Trustee and Fixing of Bond; Acceptance of Appointment As Interim Trustee” pursuant to which, among other things, Elissa D. Miller was appointed and accepted her appointment as chapter 7 trustee for the **DEBTOR’S ESTATE**, and she continues to act in that capacity as well as the Successor-in-Interest Trustee of the Girardi Keese Client Trust Accounts.

D. The **TRUSTEE** warrants and represents that, in her capacity as chapter 7 trustee and Successor-in-Interest Trustee of the Girardi Keese Client Trust Accounts, she is the sole and exclusive holder of the **CLAIMS** (as hereinafter defined) which are the subject of this **AGREEMENT**.

E. On December 29, 2022, the **TRUSTEE**, as plaintiff, caused to be filed her “Complaint for (1) Avoidance and Recovery of Fraudulent Transfers, (2) Preservation of Fraudulent Transfers, and (3) Disallowance of Claims” (the “**COMPLAINT**”) against **NIKITA** and **ROKITA**, as defendants, giving rise to the adversary proceeding entitled Elissa D. Miller v. Nikita Management, Inc., et al., bearing Adv. No. 2:22-ap-01268-BR (the “**ACTION**”), pursuant to which the **TRUSTEE** sought, among other things, to avoid and recover, under both federal and state law, certain alleged fraudulent transfers.

F. **DEFENDANTS** deny that the **TRUSTEE** is entitled to avoid and recover funds as fraudulent transfers, under either federal or state law, as alleged in the **COMPLAINT**.

G. The parties now desire to resolve the **ACTION** and the claims for relief asserted therein and to avoid the uncertainty, costs, and expenses associated with adjudication of the **ACTION**.

PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals and of the mutual agreements, covenants, and releases set forth herein, and for other good and valuable consideration, the sufficiency and adequacy of which is acknowledged by the parties, the parties hereto agree as follows:

1. **Recitals.** The recitals contained in paragraphs A through G (the “**RECITALS**”) are an integral part of this **AGREEMENT** and are incorporated herein by reference.

2. **Rules of Construction.** The following rules of construction govern and apply to the interpretation and construction of this **AGREEMENT**:

2.1. Whenever the name of the **TRUSTEE** is used, it includes all current and former agents, employees, attorneys, accountants, successors, and assigns of the **TRUSTEE** and all other persons and entities for whose acts and omissions the **TRUSTEE** may be held liable.

2.2. Whenever the name of **NIKITA** is used, it includes all parents, subsidiaries, related, and affiliated entities, all current and former agents, employees, officers, directors, successors, and assigns of **NIKITA**, as applicable, and all other persons and entities for whose acts and omissions **NIKITA** may be held liable, including, without limitation, **ROKITA**.

2.3. Whenever the name of **ROKITA** is used, it includes all successors and assigns of **ROKITA**, as applicable, and all other persons and entities for whose acts and omissions **ROKITA** may be held liable, including, without limitation, **NIKITA**.

2.4. Each party acknowledges that it has participated in the drafting of this **AGREEMENT** and reviewed the terms of the **AGREEMENT** and, as such, no rule of construction shall apply in any interpretation of this **AGREEMENT** which might result in this **AGREEMENT** being construed in favor of or against either of them, including,

without limitation, any rule of construction to the effect that ambiguities ought to be resolved against the drafting party.

2.5. The underscored word or words appearing at the commencement of sections of this **AGREEMENT** are intended only as a guide and are not intended, and should not be construed, as controlling, enlarging, restricting, explaining, or modifying, in any manner, the language or meaning of those sections or subsections.

3. Settlement. In consideration for the promises made in this **AGREEMENT**, including, without limitation, dismissal of the **ACTION** against **DEFENDANTS**, with prejudice, **ROKITA** shall pay the **ESTATE** the total amount of Thirty Thousand Dollars and Zero Cents (\$30,000) (the "**SETTLEMENT PAYMENT**"). The **SETTLEMENT PAYMENT** shall be due on or before the fifteenth (15th) calendar day following the date the order of the **BANKRUPTCY COURT**, or other court of competent jurisdiction, approving this **AGREEMENT** becomes a final, unstayed order. The **SETTLEMENT PAYMENT** shall be made by wire (pursuant to instructions provided by the **TRUSTEE**) or business or cashier's check made payable to "Elissa D. Miller, Chapter 7 Trustee for Girardi Keese", and by delivering said business or cashier's check to Elissa D. Miller, Chapter 7 Trustee, Greenspoon Marder LLP, 1875 Century Park East, Suite 1900, Los Angeles, California 90067.

4. No 11 U.S.C. § 502(h) Claim. In addition to the **SETTLEMENT PAYMENT**, **DEFENDANTS** hereby acknowledge and expressly waive any claim provided by 11 U.S.C. § 502(h) that may arise in connection with the **SETTLEMENT PAYMENT**. The **TRUSTEE** further reserves the right to object to any proof of claim (if any), or scheduled claim, that **DEFENDANTS** may have previously filed against the **DEBTOR** and the **ESTATE**.

5. Dismissal of Action With Prejudice Upon Bankruptcy Court Approval and Payment of Settlement Payment. In consideration for the promises made in this **AGREEMENT**, the **TRUSTEE** shall, within five (5) business days after confirmation that the **SETTLEMENT PAYMENT** has been honored by the **TRUSTEE'S** depository institution, file with the **COURT** a request for dismissal dismissing the entire **ACTION** against **DEFENDANTS** with prejudice (the "**REQUEST**").

6. Mutual Release. Except for: (a) a breach of this **AGREEMENT** and claims arising by reason of such breach; (b) enforcement of rights, obligations, and duties arising under this **AGREEMENT**; and (c) the satisfaction of the executory provisions of this **AGREEMENT**, in consideration for the provisions of this **AGREEMENT**, the **TRUSTEE**, on the one side, and **DEFENDANTS**, on the other side, do hereby fully and finally compromise and settle with, and forever release, remise, relieve, waive, relinquish, and discharge each other from any and all claims, complaints, rights, manner of action or actions, cause or causes of action, suits, debts, dues, demands, obligations, charges, costs, expenses (including but not limited to attorneys' fees), sums of money, controversies, damages, accounts, agreements, covenants, contracts, judgments, reckonings, liens, and liabilities of every kind and nature whatsoever, whether at law or in equity, whether based upon statute, common law, or otherwise, whether matured, contingent, or non-contingent, whether direct or indirect, whether known or unknown, whether suspected or unsuspected, whether or not hidden, and without regard to the subsequent discovery or existence of different or additional facts, which the **TRUSTEE** and **DEFENDANTS** ever

had, now have, or may claim to have against each other (the “**CLAIM(S)**”) arising out of, based on, asserted in, or in connection with any matter, cause, claim, or thing or related to the **ACTION**, any of the above now accrued or hereafter accruing. The releases herein only arise out of the **ACTION** filed in the **DEBTOR’S** case and the **TRUSTEE** is not releasing any claims against **DEFENDANTS** unrelated to the **DEBTOR’S** case.

7. **Final Release and Bar.** The parties hereto hereby acknowledge that it is their intention that this **AGREEMENT** shall be effective as a full and final release of, and as a bar with prejudice to, each and every **CLAIM** which the parties have or had against one another as is applicable, directly or indirectly. In connection with such waiver and relinquishment, the parties acknowledge that they or their attorneys may hereafter discover facts different from or in addition to the facts that they now know or believe to be true with respect to the subject matter of this **AGREEMENT**, but that it is their intention to hereby fully, finally, absolutely, and forever release any and all **CLAIMS** released pursuant to Section 6, above, which now do exist, may exist, or heretofore have existed between them, and that in furtherance of such intentions the release as given herein by the parties shall be and remains in effect as a full and complete release of the **CLAIMS** released in Section 6 above, notwithstanding the discovery of any such different or additional facts.

Notwithstanding the discovery of any such additional or different facts, the parties certify that they have read Section 1542 of the California Civil Code set forth below:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The parties hereto do hereby waive application of Section 1542 of the California Civil Code and any other statutes, common law rights, rules, or the like which may operate to limit the intent of this **AGREEMENT** with respect to the **CLAIMS** released in Section 6 above. The parties understand and acknowledge the significance and consequence of this waiver of Section 1542 of the California Civil Code is that even if they should eventually suffer additional damages on account of the **CLAIMS** released in Section 6 above, they will not be permitted to make any claim for such damages.

8. **Covenant Not to Sue.** The **TRUSTEE** and **DEFENDANTS** hereby covenant and agree that they will forever refrain and forbear from commencing, instituting, or prosecuting any lawsuit, action, or other proceeding against each other based on, arising out of, or in connection with the **CLAIMS** released in Section 6 above. Notwithstanding the foregoing, nothing contained in this **AGREEMENT** shall preclude the **TRUSTEE** or **DEFENDANTS** from exercising their respective rights in the event the other party breaches any of its obligations under this **AGREEMENT**.

9. **Denial of Liability.** Liability for any claims that the TRUSTEE has or may have asserted is denied by DEFENDANTS. This AGREEMENT is a compromise of disputed claims and shall never be construed as an admission of liability or responsibility for any purpose by either party.

10. **Mutual Warranties and Representations.** The TRUSTEE and DEFENDANTS hereby represent and warrant to each other that as of the date of this AGREEMENT:

10.1 The TRUSTEE and DEFENDANTS have each consulted with, or have had the opportunity to consult with, an attorney of their choosing, and each of them has carefully read this AGREEMENT, fully understands the AGREEMENT and its terms and provisions, and each of them either is relying upon legal advice in entering into this AGREEMENT voluntarily, or has determined, without being under any duress or coercion, not to rely upon legal advice in entering into this AGREEMENT.

10.2 The TRUSTEE and DEFENDANTS have each made such investigation of the facts and matters pertaining to this AGREEMENT and settlement of the ACTION as each of them has deemed necessary.

10.3 Except for the statements, representations, and promises contained in this AGREEMENT, the parties hereto are not relying upon any statement, representation, or promise from the other party hereto or any of the other party's agents, employees, representatives, or attorneys in entering into this AGREEMENT.

10.4 Each person executing this AGREEMENT on behalf of a party hereto has been duly authorized to execute this AGREEMENT on behalf of the party and to bind the party to the terms and provisions of this AGREEMENT by appropriate appointment, delegation of authority, corporate by-laws, or board resolutions.

10.5 The TRUSTEE represents and warrants, which representation and warranty is a material inducement to the execution of the AGREEMENT, that, in her capacity as chapter 7 trustee of the ESTATE, she is the sole holder of the CLAIMS which are the subject of this AGREEMENT, with the sole right to initiate, litigate, and compromise said CLAIMS.

10.6 As to the matters addressed herein, this AGREEMENT is intended to be final and binding upon the parties hereto, regardless of any mistake of fact or law made by the parties hereto. The TRUSTEE and DEFENDANTS each assume the risk of any mistake of fact or law in relation to this AGREEMENT and may not set aside this AGREEMENT, or any portion thereof, based on the subsequent discovery of any such mistake of fact or law.

11. **Complete Agreement.** This AGREEMENT contains the entire agreement between the parties with respect to the matters addressed in this AGREEMENT and the AGREEMENT supersedes all prior agreements, whether written or oral. Should a dispute arise under this AGREEMENT, neither the TRUSTEE nor DEFENDANTS may introduce evidence of any

alleged prior or contemporaneous agreements or understandings to alter the terms of this AGREEMENT.

12. **No Oral Modifications.** This AGREEMENT may be amended only in a writing signed by the parties hereto.

13. **Retention of Jurisdiction.** The BANKRUPTCY COURT shall retain exclusive jurisdiction to resolve any controversy or claim arising out of or relating to this AGREEMENT.

14. **Attorneys' Fees and Costs.** The TRUSTEE and DEFENDANTS shall each bear their own costs and attorneys' fees, if any, with regard to any aspect of the TRUSTEE'S CLAIMS against DEFENDANTS, including, with respect to the COMPLAINT, the ACTION, and the negotiation, drafting, and execution of this AGREEMENT. However, the TRUSTEE and DEFENDANTS agree that, in the event of any legal or equitable action or arbitration proceeding required to enforce or defend this AGREEMENT, the prevailing party, as that term is defined by California Civil Code § 1717, shall be entitled to an award of its attorneys' fees, costs, and expenses incurred in connection with the enforcement or defense of this AGREEMENT, in addition to any other damages it may suffer as a result of the violation or breach of this AGREEMENT, or other relief to which it may be entitled.

15. **Successors.** This AGREEMENT shall bind and inure to the benefit of the parties hereto and their respective successors, predecessors, and assigns.

16. **Severability.** Should any provision of this AGREEMENT be unenforceable, those provisions shall be considered severable, and the remaining provisions shall remain in effect.

17. **Governing Law.** This AGREEMENT shall be construed and governed by federal law and, where applicable thereto, or incorporated therein, by California law.

18. **Counterparts.** This AGREEMENT may be executed in counterparts and by facsimile signature with the same force and effect as if all original signatures were set forth in a single document. This AGREEMENT shall not be binding until signed by both parties.

19. **Further Assurances.** The TRUSTEE and DEFENDANTS hereby agree, on request of the other party hereto, to perform all acts reasonably necessary, including execution of further documents, to effectuate the intent of this AGREEMENT.

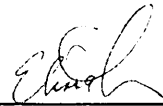
20. **Good Faith and Fair Dealing.** This AGREEMENT was negotiated in good faith, at arm's length, and for good, reasonable and fair consideration as to all parties.

[Remainder of page intentionally left blank]

21. Bankruptcy Court Approval. This **AGREEMENT** is explicitly conditioned upon entry of an order by the **BANKRUPTCY COURT**, or other court of competent jurisdiction, approving the terms and conditions of this **AGREEMENT**. In the event the **BANKRUPTCY COURT**, or other court of competent jurisdiction, does not approve this **AGREEMENT**, it will be null and void.

BY SIGNING THIS AGREEMENT, I CERTIFY THAT I HAVE READ THIS AGREEMENT AND UNDERSTAND ALL OF ITS TERMS, AND I VOLUNTARILY AGREE TO THE TERMS AS SET FORTH IN THIS AGREEMENT.

**ELISSA D. MILLER, Solely in her capacity as
chapter 7 trustee for the bankruptcy estate of
Girardi Keese**

By: _____
Elissa D. Miller, Chapter 7 Trustee

**NIKITA MANAGEMENT, INC., a California
corporation**

By: _____
Nicole Rokita
Its: President

NICOLE ROKITA

By: _____
Nicole Rokita

21. **Bankruptcy Court Approval.** This AGREEMENT is explicitly conditioned upon entry of an order by the **BANKRUPTCY COURT**, or other court of competent jurisdiction, approving the terms and conditions of this AGREEMENT. In the event the **BANKRUPTCY COURT**, or other court of competent jurisdiction, does not approve this AGREEMENT, it will be null and void.

BY SIGNING THIS AGREEMENT, I CERTIFY THAT I HAVE READ THIS AGREEMENT AND UNDERSTAND ALL OF ITS TERMS, AND I VOLUNTARILY AGREE TO THE TERMS AS SET FORTH IN THIS AGREEMENT.

**ELISSA D. MILLER, Solely in her capacity as
chapter 7 trustee for the bankruptcy estate of
Girardi Keese**

By:

Elissa D. Miller, Chapter 7 Trustee

NIKITA MANAGEMENT, INC., a California corporation

By: 
Nicole Rokita

Its: President

NICOLE ROKITA

By: 
Nicole Rokita

51182583v2

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 333 South Grand Avenue, Suite 3400, Los Angeles, CA 90071.

A true and correct copy of the foregoing document entitled (*specify*): **CHAPTER 7 TRUSTEE'S MOTION FOR ORDER AUTHORIZING COMPROMISE OF CONTROVERSY RE NICOLE ROKITA AND NIKITA MANAGEMENT, INC. PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND AUTHORIZING PAYMENT OF CONTINGENCY FEE TO SPECIAL AVOIDANCE POWER LITIGATION COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ELISSA D. MILLER IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) July 6, 2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See Attached ECF List

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) July 6, 2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Barry Russell
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street, Suite 1660
Los Angeles, CA 90012

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) July 6, 2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Email

Attorneys for Defendants:

David Weinstein, Esq.
Weinstein Law Firm, Professional Corporation
16501 Ventura Boulevard, Suite 400
Encino, CA 91436
dweinstein@weinsteinlawfirm.net

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 6, 2023

Date

Cheryl Caldwell

Printed Name

/s/Cheryl Caldwell

Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

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